

CASE NUMBER: C14H-2022-0073
WESTGATE CONDOMINIUM ASSOCIATION
1122 COLORADO STREET, AUSTIN, TX
CITY COUNCIL – DECEMBER 1, 2022

The current Application is invalid and incomplete. City Council should reject the Westgate Tower application for zoning change because:

1. **APPLICATION INACCURATE & INCOMPLETE:** The application is incomplete, contains inaccurate information, and fails to follow procedures required using the City’s form for Historic Zoning. The applicant is not the “Owner;” the applicant has not provided proof of each Owner, not the HOA. **The HOA and HOA Board own no real property, only Owners can grant the applicant written permission to seek the zoning change on the Owner’s behalf.**
2. **OWNER SIGNATURES REQUIRED ON APPLICATION:** 1122 Colorado Street, Austin, Texas is owned by 102 individual owners. Contrary to the false assertion in the application that the “Owner” is “Westgate Condominium Association,” that association does not own any of the property at that location. **The 102 owners each have a deed, and each own their condominium plus a percentage of the common area.** The land and common area are not owned by a single person, entity, or the HOA. **City staff’s Zoning Change Review Sheet falsely says, “PRESENT OWNERS: Westgate Condominium Association.”** *Not true.*

The ownership list is included in the agenda backup, but there is **no documentation showing which Owners of the 102 individual parcels are applying for zoning**, or in accordance with the City rules, signed an authorization by any one, let alone all, of the Owners for the Association or any agent to seek historic zoning on each of the Owner’s behalf. *This alone is sufficient grounds to deny the application.*

Each Owner was not provided a statement, as required by Local Govt Code LGC § 211.0165(c) describing the impact that a historic designation of the owner’s property may have on the owner or the Owner’s property not later than 15th day before the initial hearing. *This alone is sufficient grounds to deny the application.*

3. **NON-COMPLIANCE WITH STATE LAW – CITY COUNCIL NEEDS TO DESIGNATE COMMISSION WITH SOLE AUTHORITY:** The City must comply with Tex. Loc. Gov’t Code § 211.0165 (as amended by S.B. 1585, eff. September 1, 2021), which requires the City to “designate *one*” commission (zoning, planning or historical commission) “with *exclusive authority* to approve the designations of properties as local historic landmarks...” Since September 1, 2021 no property can be subjected to action on historic zoning by more than one commission, which must be designated as the exclusive authority to designate property as historic. Moreover, unless “the owner of the property(s) consents,” the vote required for such designation by both the “designated” commission and the City Council must be by 3/4th vote.

If the Historic Landmark Commission is given “*exclusive authority*”, then the Planning Commission would not have authority on this historic zoning case or any others.

4. **MISSING TAX CERTIFICATES:** There appear to be unpaid taxes on one or more Westgate condominiums. The Application Instructions Section 1 says, “A Tax Certificate [indicating that not taxes are owed on the property] must be submitted with all zoning applications.” **The application is incomplete because it does not include 102 tax certificates showing taxes paid current**, running the risk that the Planning Commission would approve Historic Zoning on a property on which there are delinquent taxes.

This alone is sufficient grounds to deny the application.

5. **OWNERS OF WESTGATE TOWER HAVE NOT SIGNED THE APPLICATION, NOR AUTHORIZED THE AGENT IN COMPLIANCE WITH CITY APPLICATION INSTRUCTIONS AND STATE LAW:**

The City’s “Application Instructions” for Historic Zoning Section A (1) says “Please indicate name of current owner. The current owner, or authorized agent, may apply for the zoning change.” Application Instruction A (16) (“Owner Information” states: **“Owner information - Owner information is required. If the owner agrees to be represented by an agent, then please a written authorization for the agent to represent the owner's interests. If there is more than one owner, attach additional owner information to application. Be sure that all signatures are legible and address information is correct.”**

16. **Owner information** - Owner information is required. If the owner agrees to be represented by an agent, then please a written authorization for the agent to represent the owner's interests. If there is more than one owner, attach additional owner information to application. Be sure that all signatures are legible and address information is correct.

No owner signatures are included in the application. An undated, unsworn, letter on stationery from “*The Westgate*,” signed by Gordon Johnson as “*Westgate President*” purports that the “Board of Directors for the Westgate Condominium Association” authorized Brian Evans to serve as “*Agent on behalf of all Westgate Owners*.” The letter does not indicate how the Board of Directors obtained authority to make such a designation, nor does the letter even state the date of any meeting by the Directors at which such vote occurred. Regardless, to be a valid application, either **each Owner must sign it or provide a legible signature directly designating an agent to represent that, Owner**. The process and application information used by the Westgate Tower application violates state law and the City’s own procedures by omitting the Owner’s themselves from ever putting in writing, anywhere, that the Owner wants or agrees to the restrictions of historic zoning. *This alone is reason enough for the Planning Commission to reject the application.*

6. **MISSING DEED REFERENCE TO THE PRESENT OWNER, OCCUPANCY:**

The Application Instructions Section 11 requires **“The volume and page numbers of the deed conveying the property to the present owner and the total size of the property conveyed shall be shown....”** The application does not contain the County Clerk’s property record **“volume and page numbers” of the deed to “the present owner.”** The Application contains Standard Form F.1 (“Historical Documentation – Deed Chronology”), but all the applicant did was put the street address on the “example” form, *i.e.*, the form submitted does not contain any deed chronology for the property and ignores the instruction “Continue through the present.”

Likewise, the Application does not contain the required Form F.2 (“Historical Documentation – Occupancy History”). The applicant merely inserted the street address on the “example” form and does not comply with the instruction to “provide a chronology of all occupants of the property from its construction to the present.”

7. **SYSTEMIC FAILURE TO COMPLY WITH STATE LAW:**

On March 17, 2022, the City of Austin lost a court challenge to its zoning tactics in *City of Austin v. Acuna*, No. 14-20-00356-CV, 2022 WL 805953, at *2 (Tex. App.—Houston [14th Dist.] Mar. 17, 2022, no pet.). With that fresh slap from the Courts, one might expect the City officials to carefully comply with zoning statutes, including Tex. Loc. Gov't Code section 211.0165. **Nothing in the application backup demonstrates any compliance with any part of Section 211.0165.**

The Application also violated the Austin City Code. Austin City Code § 25-2-242(3) says zoning may be initiated by the “record owner.” **This application was not initiated by the record owners and no proper designation of an Agent for each Owner has been provided. Austin City Code § 25-2-353(B) says: A record owner or the record owner's agent filing an application for an owner-initiated historic landmark (H) designation shall affirm that no person involved in the matter was or will be compensated on a contingent fee basis or arrangement. *No such affirmation is included in the Application or agenda backup.***

- **Why has this application which is expecting a massive tax break, being processed in violation of State law, and contrary to normal application requirements of the City?**
- **The Landmark Commission should have not approved the Application** without requiring each Owner to sign a designation of agent, and should have required the Application include all of the required information. Likewise, the Planning Commission should reject this application as incomplete, unauthorized by each Owner, and in violation of Tex. Loc. Gov't Code § 211.0165 and Austin City Code § 25.2-353(B). **At this point, there is a question whether the Historic Landmark or the Planning Commission have jurisdiction.**
- **Planning Commission was deeply troubled by the idea of granting tax exemptions to 100 highrise condo owners, using badly needed tax monies that come at the expense of the City, County, Travis Health, and our school kids at AISD. Planning Commission did not recommend this case to you for this reason.**
- **We have heard no arguments from the either the applicant, nor any condo high-rise owners (who own air rights interior to the building) explaining the public benefit of giving them a tax windfall of as much as \$675,000 annually away from the City, Travis County, ACC, AISD, and Travis Health. Our needs for affordable housing, our homeless, our school children, our roads, parks, and health system present a far greater public need.**
- **As to precedent, according to TCAD neither any of the Brown Building condos nor the newer Stonewall Townhome Condos on Blanco Street, both zoned Historic, received any historic tax exemptions this year in 2021. Nor should they. Stonewall Townhomes sit on historic land, however these large 2-story units are all new construction built in 2017.**
- **Mayor and Council, you have the power to recommend historic zoning for the entire property, but to approve historic tax exemption only for the Common Area (land, landscaping, and building structure and exterior), and exclude the 102 high-rise condos at a cost of over \$650,000 annually, in perpetuity. To include the individual condos in tax exemptions serves absolutely no public benefit, nor any preservation purpose.**

From: [Rick Hardin](#)
To: [Contreras, Kalan](#)
Subject: FW: City Council December 8, 2022 Public Hearing - Item 100, C14H-2022-0073 – Westgate Tower at 1122 Colorado Street.
Date: Monday, December 5, 2022 1:39:35 PM
Attachments: [CASE NO. C14H-2022-0073 - WESTGATE TOWER.pdf](#)

*** External Email - Exercise Caution ***

Hello Ms. Contreras,

Please find attached regarding the upcoming public hearing on December 8, 2022, before City Council concerning Agenda Item 100, C14H-2022-0073 – Westgate Tower located at 1122 Colorado Street, Austin, TX.

I hereby request **speak in opposition** to Agenda Item 100, C14H-2022-0073 at this upcoming public hearing.

I request that a copy of this attachment be provided the Mayor and each Council member prior to the December 8, 2021 hearing.

I request that City Staff and Council place **Case C14H-2022-0073 as a contested matter for public hearing to allow speakers in opposition.**

I request that City Staff and Council place **Case C14H-2022-0073 for 2nd reading only, and not place this item on the consent agenda.**

Richard Hardin

From: Rick Hardin
Sent: Monday, December 5, 2022 1:37 PM
To: City.Clerk@austintexas.gov
Cc: Contreras, Kalan <Kalan.Contreras@austintexas.gov>
Subject: City Council December 8, 2022 Public Hearing - Item 100, C14H-2022-0073 – Westgate Tower at 1122 Colorado Street.

RE: C14H-2022-0073 – Westgate Tower at 1122 Colorado Street.

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Thank you!

Richard G. Hardin


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